



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 22-C0003]

The TJX Companies, Inc.

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the Federal Register any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with The TJX Companies, Inc., containing a civil penalty in the amount of \$13 million, subject to the terms and conditions of the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by [INSERT DATE 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 22-C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863-8938 (mobile), (301) 504-7479 (office); email: cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Rosalee Thomas, Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; rbthomas@cpsc.gov or 301-504-7656.

SUPPLEMENTARY INFORMATION: The Commission voted (4-0-1) to provisionally accept the proposed Settlement Agreement and Order pertaining to The TJX Companies, Inc. Chair Hoehn-Saric, Commissioners Baiocco, Trumka and Boyle voted to provisionally accept

the Settlement Agreement and Order. Commissioner Feldman voted to take other action.

The text of the Agreement and Order appears below.

Dated: August 2, 2022.

Alberta E. Mills,

Secretary.

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:

The TJX Companies, Inc.

CPSC Docket No. 22-C0003

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”) and 16 C.F.R. § 1118.20, The TJX Companies, Inc. (“TJX”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. TJX is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in Framingham, Massachusetts.

STAFF CHARGES

4. Between March 2014 and October 2019, TJX knowingly sold, offered for sale, and distributed into commerce at least 1,205 units of 21 different recalled consumer products online and at its brick and mortar retail stores (“Recalled Products”) described in paragraph 5, below in violation of Section 19(a)(2)(B) of the CPSA, 15 U.S.C. § 2068(a)(2)(B).

5. The Recalled Products include:

- StyleCraft Upholstered Benches
- Bollinger Fitness Resistance Bands
- Linon Home Foldable Wood Patio Chairs
- MZ Berger Children's Light-Up Watches
- Calphalon Pizza Wheels
- Ivanka Trump Scarves
- HVTM Foldable Lounge Chairs
- Swagway Hoverboards
- Calphalon Cutlery Knives
- Kids II Oball Rattles
- Bradshaw Int'l Coffee Presses
- Glass Beer Mugs
- Sharper Image/Frigidaire Mandoline Slicers
- Carter's Children Cardigan Sets
- Swivel Barstools
- Jimco Bistro Chair
- Glass & Ceramic Drawer Knobs
- Fisher-Price Rock 'n Play Sleepers
- Kids II Rocking Sleepers
- Ion Audio Portable Speakers
- Fisher-Price Inclined Sleeper Accessory for Play Yards

6. The hazards posed by the Recalled Products include, but are not limited to death, fire, explosion, burn, laceration, and choking. Of the 1,205 units sold post-recall, 960 units posed a risk of infant fatalities. These products include Fisher-Price Rock 'n Play Sleepers, for which the CPSC and the recalling manufacturer reported receiving 30 reports of infant fatalities;

Kids II Rocking Sleepers, for which the CPSC and the recalling manufacturer reported receiving 5 reports of infant fatalities; and Fisher-Price Inclined Sleeper Accessory for Play Yards. None of the reported fatalities identified TJX as the retailer of the product.

7. Each of the Recalled Products listed above in paragraph 5 were subject to voluntary corrective action taken by TJX or by the manufacturers in consultation with the Commission. Each of these recalls was also publicized by TJX or the manufacturers in consultation with the Commission, of which the Commission also notified the public. TJX knew, or should have known, of the voluntary corrective action taken for each Recalled Product.

8. The Recalled Products are “consumer products,” and, at all relevant times, TJX was a “retailer” of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (8) and (13) of the CPSA, 15 U.S.C. § 2052(a)(5), (8), and (13).

9. Under CPSA section 19(a)(2)(B), 15 U.S.C § 2068(a)(2)(B), it is unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States, any consumer product that is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, or if the seller, distributor, or manufacturer knew, or should have known, of such voluntary corrective action.

10. Pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1), any person who “knowingly” violates CPSA section 19 is subject to civil penalties. Under section 20(d) of the CPSA, 15 U.S.C. § 2069(d), the term “knowingly” means: “(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.”

11. TJX sold, offered for sale, and distributed Recalled Products because TJX failed to implement adequate procedures to accurately identify, quarantine, and prevent the sale, offer for sale,

and distribution of the Recalled Products. The deficiencies in TJX's reverse logistics and compliance programs allowed Recalled Products to reenter commerce.

12. On October 10, 2017, TJX notified Commission staff that TJX discovered that it had sold one Recalled Product post-recall. TJX updated the Commission staff regarding identified post-recall sales of two Recalled Products- the Glass Beer Mugs and Swivel Barstools. On February 21, 2019, TJX stated that it was "implementing a process to conduct periodic checks to confirm the SKU blocks that have been established in connection with CPSC recalls are functioning properly," and would undertake a "comprehensive review of all recalls conducted in cooperation with CPSC over a period of more than five years from January 2014 to date of products sold by TJX." By March 20, 2019, based on its internal review, TJX reported that it had sold 232 units of 14 separate products post-recall. On September 5, 2019, TJX notified the Commission staff that it sold additional units of Recalled Products post-recall at T.J. Maxx, Marshalls and HomeGoods stores, including approximately: 1) 248 units of Fisher-Price Rock 'n Play Sleeper; sold post-recall between April 15, 2019 and August 26, 2019 at T.J. Maxx, Marshalls and HomeGoods stores; 2) 127 units of Kids II Rocking Sleeper; sold between April 29, 2019 and August 26, 2019 at T.J. Maxx, Marshalls and HomeGoods stores; and 3) 35 units of Fisher-Price Inclined Sleeper Accessory for Play Yards sold between June 28, 2019 and August 26, 2019 at T.J. Maxx and Marshalls stores.

13. Upon completion of the compliance investigation, on November 26, 2019, Commission and TJX jointly issued a press release announcing that TJX had sold approximately 1200 units of 19 different Recalled Products between 2014 and 2019. Even after the public announcement, TJX offered for sale a different recalled good (not included as one of the listed Recalled Products) to consumers as late as July 3, 2021, when a customer was injured in a TJX Florida store while attempting to sit on a recalled outdoor wooden folding chair that TJX recalled 2 months earlier.

14. TJX paid two prior civil penalties to the Commission in 1998 and 2009.

15. TJX knew and/or should have known of these sales of Recalled Products.

16. TJX's sale and distribution of the Recalled Products was "knowing," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. §2069(d).

17. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, TJX is subject to civil penalties for its knowing sale of the Recalled Products, in violation of section 19(a)(2)(B) of the CPSA, 15 U.S.C. § 2068(a)(2)(B).

RESPONSE OF TJX

18. TJX's settlement of this matter does not constitute an admission of the staff's charges as set forth in paragraphs 4 through 17.

19. TJX prohibits the sale of recalled products. The company has had processes and procedures to implement recalls, including to remove recalled products from the sales floors of its stores and to implement SKU blocks and thereby prevent post-recall sales.

20. Throughout this matter, TJX worked cooperatively with CPSC staff and voluntarily notified staff of the post-recall sales that TJX identified through an internal review that TJX undertook at its own initiative.

21. TJX has enhanced its processes and procedures over time to further reduce the risk of post-recall sales.

22. TJX enters into this Agreement to settle this matter without the delay and unnecessary expense of litigation. TJX does not admit that it violated the CPSA or any other law, and TJX's willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by TJX of liability or violation of any law.

AGREEMENT OF THE PARTIES

23. Under the CPSA, the Commission has jurisdiction over the matter involving the Recalled Products described in this Agreement and over TJX.

24. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by TJX or a determination by the Commission that TJX violated the CPSA.

25. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, TJX shall pay a civil penalty in the amount of thirteen million dollars (\$13,000,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <https://www.pay.gov>, for allocation to, and credit against, the payment obligations of TJX under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

26. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by TJX to the United States, and interest shall accrue and be paid by TJX at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). TJX shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and TJX agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. TJX shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

27. After staff receives this Agreement executed on behalf of TJX, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly

following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

28. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon TJX, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

29. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon TJX and (2) the date of issuance of the final Order, for good and valuable consideration, TJX hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

- a. an administrative or judicial hearing;
- b. judicial review or other challenge or contest of the Commission's actions;
- c. a determination by the Commission of whether TJX failed to comply with the CPSA and the underlying regulations;
- d. a statement of findings of fact and conclusions of law; and
- e. any claims under the Equal Access to Justice Act.

30. TJX shall maintain a compliance program and a system of internal controls and procedures designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by TJX, which shall contain the following elements:

- a. written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance, whether or not an injury is referenced, is conveyed effectively to personnel responsible for CPSA compliance;
- b. procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- c. procedures requiring that information required to be disclosed by TJX to the Commission is recorded, processed and reported in accordance with applicable law;
- d. procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law;
- e. procedures requiring that prompt disclosure is made by applicable employees with responsibilities for TJX's product compliance program to senior management of any significant deficiencies or material weaknesses in the design or operation of such compliance program or internal controls that affect adversely, in any material respect, TJX's ability to record, process and report to the Commission in accordance with applicable law;
- f. mechanisms to communicate to all applicable TJX employees through training programs or otherwise, company policies and procedures to prevent violations of the CPSA;
- g. a program for the appropriate identification, quarantine and disposition of recalled goods; the program currently includes, but is not limited to:
 - i. implementation and maintenance of stock keeping unit (SKU) blocks at points of sale, reinforced informational technology (IT) coverage for SKU blocks, and maintenance of SKU blocks of recalled products without a time limit;

- ii. a product master database that consolidates product style information of TJX's brick and mortar retail chains, including T.J. Maxx, Marshalls, HomeGoods and Homesense;
 - iii. dissemination to stores of recall-related communications and a catalog of recalled product information; and
 - iv. labeling and quarantine of recalled products prior to disposition;
- h. Senior management responsibility for, and general oversight of, TJX's product compliance program; this is currently carried out through means including, but not limited to:
 - i. establishment of a Vice President, Risk and Compliance position that oversees the Product Compliance group;
 - ii. assignment of staff resources sufficient to implement CPSA compliance processes and procedures, including recalled product identification; and
 - iii. establishment of a cross-functional program team tasked with implementing TJX's product safety process, including recall management;
 - iv. a mechanism for confidential and/or anonymous employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; and
 - v. retention of all CPSA compliance-related records for at least five (5) years and making such records available to CPSC staff upon request.
- 31. TJX shall submit a report, sworn to under penalty of perjury:
 - (i) describing in detail its compliance program and internal controls and the actions the firm has taken to comply with each subparagraph of paragraph 30,
 - (ii) affirming the firm has reviewed its compliance program and internal controls, including actions undertaken to review the effectiveness of the program and

- controls, and that it is in compliance with each subparagraph of paragraph 30 or describing in detail any non-compliance with any such subparagraph, and
- (iii) identifying any changes or modification made to the firm's compliance program or internal controls to address any non-compliance with any subparagraph of paragraph 30.

32. Such reports shall be submitted annually to the Director, Office of Compliance, Division of Enforcement and Litigation, for a period of 5 years beginning 12 months after the Commission's Final Order of Acceptance of the Agreement.

33. Notwithstanding and in addition to the above, upon request of staff, TJX shall promptly provide written documentation of any material changes or modifications to its CPSA compliance program and related internal controls and procedures, including, but not limited to, the effective dates of the changes and modifications thereto. TJX shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff, to evaluate TJX's compliance with the terms of the Agreement.

34. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

35. TJX represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of TJX, successors, transferees, and assigns, enforceable against TJX in accordance with its terms. The individuals signing the Agreement on behalf of TJX represent and warrant that they are duly authorized by TJX to execute the Agreement.

36. The signatories represent that they are authorized to execute this Agreement.

37. The Agreement is governed by the laws of the United States.

38. The Agreement and the Order shall apply to, and be binding upon, TJX and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject TJX, and each of its successors, transferees, and assigns, to appropriate legal action.

39. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

40. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

41. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

42. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and TJX agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

THE TJX COMPANIES, INC.

Dated: 6/15/2022

By: /s/

Paul Kangas

THE TJX COMPANIES, INC.

Senior Vice President, Chief Risk and Compliance Officer

Dated: 6/15/2022

By: /s/

Michelle F. Gillice

Arnold & Porter Kaye Scholer LLP
Counsel for The TJX Companies, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Dated: 6/16/2022

By: /s/
Rosalee B. Thomas,
Trial Attorney

Mary B. Murphy
Director, Division of Enforcement and Litigation
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Alberta Mills, Secretary
U.S. Consumer Product Safety Commission

Finally accepted and final Order issued on the _____ day of _____, 2022.

BY ORDER OF THE COMMISSION:

Alberta Mills, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2022-16816 Filed: 8/4/2022 8:45 am; Publication Date: 8/5/2022]